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IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	No. 08 CR 888
Government,	)	
vs.	)	Chicago, Illinois
ROD BLAGOJEVICH,	)	April 30, 2010
ROBERT BLAGOJEVICH,	)	
Defendants.	)	12:09 o'clock p.m.

TRANSCRIPT of PROCEEDINGS  
BEFORE THE HONORABLE JAMES B. ZAGEL

For the Government:

THE HONORABLE PATRICK J. FITZGERALD,  
UNITED STATES ATTORNEY  
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1 APPEARANCES (continued:)

2  
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16 Also present: Michael Gillespie  
17 Arron Goldstein  
18 Lauren Kaeseberg  
19

20 For Defendant Robert Blagojevich:

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1 THE CLERK: 2008 CR 888, United States versus  
2 Blagojevich, et al.

3 MR. SCHAR: Good afternoon, Judge.  
4 Reid Schar, Chris Niewoehner and Carrie  
5 Hamilton on behalf of the United States.

6 MR. ETTINGER: Good afternoon, Your Honor.  
7 Michael Ettinger and Cheryl Schroeder for  
8 Robert Blagojevich.

9 MR. SOROSKY: Sheldon Sorosky, S-o-r-o-s-k-y,  
10 on behalf of Rod Blagojevich.

11 THE COURT: Okay.  
12 Anything anybody want to say before I start  
13 talking about the various pieces of paper I have in  
14 front of me.

15 MR. SOROSKY: Well, there is one point, and  
16 maybe we could talk about that later on, after  
17 Governor Blagojevich was arrested and the newspapers  
18 carried various articles about the alleged sale of  
19 the senate seat, the newspapers related a few days  
20 thereafter, perhaps a few weeks thereafter, that the  
21 FBI had interviewed President-Elect Obama, Chief of  
22 Staff designate Emanuel, Valerie Jarrett, and  
23 perhaps some other people who were all members of  
24 the then President-Elect Obama's inner circle or  
25 entourage. There wasn't any doubt that these

1 interviews occurred and the defense has never  
2 received any memorandums or police reports or FBI  
3 reports concerning those interviews, and I think I  
4 can speak on behalf of both defendants in that the  
5 defense would be asking for whatever notes or  
6 memorandums may have been taken concerning those  
7 interviews of those various people and perhaps  
8 others in that group that I am unaware of.

9 MR. SCHAR: Judge, certainly various names  
10 that Mr. Sorosky has stated we did tender the  
11 interview reports of those individuals, but there  
12 are others we may not have consistent with what we  
13 believe to be our discovery obligations.

14 MR. SOROSKY: Just so we're clear, we  
15 certainly got some interviews of some of the people  
16 I mentioned, but perhaps not perhaps complete  
17 reports.

18 THE COURT: With respect to the motion to  
19 issue a trial subpoena, I'm denying the motion,  
20 mainly denying the motion because the point on which  
21 it is proposed, that the President might have  
22 something to say, has to do with an allegation in  
23 the indictment that the defendant Rod Blagojevich  
24 met with a labor union official who he believed to  
25 be in contact with the president-elect.

1           The only material aspect of that is what the  
2 defendant believed, the truth of that is not  
3 material to this case, and because it's not material  
4 to this case the testimony of the President is not  
5 material to this case.

6           Now, I do recognize that under some  
7 circumstances, which in all honesty I do not  
8 envision occurring in this case, there might come a  
9 point in time where affirmative evidence is offered  
10 by the defense which could, in theory, change my  
11 view on this, but what is shown to me now falls very  
12 short of authorizing a subpoena to the President.

13           Moreover, there is a procedure for doing  
14 this. I believe both President Reagan and President  
15 Clinton testified in trials like this, and I have no  
16 doubt that in the unlikely event the President's  
17 testimony could possibly become material, there will  
18 be no difficulty in securing that testimony. I  
19 don't anticipate the President resisting a lawful  
20 subpoena.

21           So sometime perhaps late in the trial where  
22 it might become clearer, I would reconsider it then,  
23 but assuming everything that is said in this motion  
24 is true, you're talking about immaterial testimony.  
25 So that motion is denied.

1 I have a couple of other motions here that  
2 I'm going to rule on today, but the various  
3 in-limine motions regarding potential evidence and  
4 potential arguments, which I'm quite sure the  
5 defense have no intention of offering, I think  
6 everybody needs a written ruling on that. So I will  
7 issue a written ruling sometime probably by next  
8 Thursday, maybe before then. I've written out part  
9 of it now.

10 There are two motions that I think are made  
11 for purposes of preserving objections on the record,  
12 which is certainly a legitimate action by the  
13 defense.

14 There's a motion to preclude testimony of  
15 convicted witnesses who have not been sentenced.  
16 The objection is noted. It is overruled. The law  
17 is quite clear that such witnesses can testify.

18 There is also a motion to dismiss honest  
19 services signed by Sam Adam. The motion cannot,  
20 obviously, be granted under existing law. You are  
21 asking for the dismissal of charges the validity of  
22 which has been upheld in this circuit many, many  
23 times and pretty much in every other circuits. You  
24 may convey my gratitude to Mr. Adam for putting it  
25 on one single page so that he could preserve his

1 objection without causing undo labor.

2       The motion for pretrial ruling on jury  
3 instructions relating to mail fraud allegations,  
4 there are cases in which instructions on elements  
5 are given before the opening statement. I've done  
6 it once in 22 plus years here. This is not that  
7 case.

8       The need to have jury instructions at the  
9 stage of opening statement is rare. One of the  
10 reasons it's rare is is that, as we instruct the  
11 jury repeatedly, opening statements are not  
12 evidence, they're not arguments. It is true that I  
13 sometimes and lawyers sometimes wonder if they're  
14 neither of those things, what are they. The usual  
15 answer is is they are lawyers' predictions of what  
16 the evidence is going to look like and nothing more,  
17 and it's devoted to the evidence.

18       And, indeed, a lot of the things that I think  
19 are contemplated by this motion fall into the  
20 category of argument, which according to the pattern  
21 instructions of the Seventh Circuit, that an opening  
22 statement is not argument.

23       There is a suggestion in here that in opening  
24 statement defense counsel wish to speak about honest  
25 services. I'm not exactly sure, for tactical

1 reasons, why on earth they will want to do that, but  
2 if they could give me some examples of what might be  
3 in such an opening statement and the tactical reason  
4 for it, I'd be willing to look at it. But I, at  
5 least at this stage, am denying the motion for  
6 pretrial ruling in jury instructions, and obviously  
7 for the same reason I'm denying the renewed motion  
8 for continuance of stay of proceedings.

9 The rest of it you're going to have to see in  
10 writing next week.

11 Anything else?

12 MR. ETtinger: Judge, can the record reflect  
13 that Robert Blagojevich joins in that motion as to  
14 the jury instructions?

15 THE COURT: Absolutely.

16 MR. Schar: Judge, on that issue related to  
17 the jury instructions, there seems to continue to be  
18 a fundamental difference between not what the law  
19 is, but as we read that motion there seems to be a  
20 continual suggestion that they are going to argue  
21 not just the facts but argue law in opening  
22 statements which I know Your Honor will not --

23 THE COURT: And I read that myself which is  
24 why I made my little statement about what an opening  
25 statement consists of.



1 MR. SCHAR: I think there is a growing  
2 concern that they are going to suggest in some way  
3 that a quid pro quo needs to be expressed explicitly  
4 as they continue to come back to this theme which is  
5 clearly not what the law is and I just wanted to --  
6 we addressed this in our response to, I think, the T  
7 3 motion that Robert Blagojevich provided, but I  
8 just want to flag that issue again because that's  
9 something that, obviously, the government would be  
10 objecting to vehemently if there's a suggestion of  
11 that.

12 MR. SOROSKY: Judge, we respectively disagree  
13 with their interpretation of the law in quid pro quo  
14 that it doesn't have to be expressed, particularly  
15 concerning --

16 THE COURT: But that's not what they're  
17 saying. What they're saying now is, there's a time  
18 and a place for you to make that argument before me,  
19 and under certain circumstances perhaps before the  
20 jury. Although, you wouldn't be arguing it as a  
21 matter of law before the jury, you will be arguing  
22 it as a matter of fact reflecting on somebody's  
23 state of mind. And there will be a time and place  
24 to make that argument, but it's not appropriate  
25 within the confines of opening statement.

1           It's important to remember in this case and  
2 in many other similar cases, that the opening  
3 statement is a prediction, a lawyer's prediction of  
4 what the evidence is going to show, not what the law  
5 is, not whether somebody is nice or naughty, just  
6 what the evidence is going to show. And the sole  
7 purpose of the opening statement is to give the jury  
8 a look of what each side thinks the whole facts are  
9 going to look like when the evidence is over. And  
10 it's important in this case not because either side  
11 gets to fire the first shot at the other, it's  
12 important because this is not going to be a short  
13 trial, the evidence is going to come in pieces, and  
14 the jury is entitled to an overall picture as seen  
15 by the various sides as to what that picture is  
16 supposed to look like. It's one of the reasons that  
17 they'll be able to understand the evidence as it  
18 comes in.

19           And because of the length of this trial, I'm  
20 going to be fairly rigorous about enforcing the  
21 limitations on opening statements that exist in the  
22 law but are often neglected here if you have a 3-day  
23 jury trial and the closing argument is going to  
24 follow so closely after the opening statement, it  
25 doesn't make a lot of difference. In this case, the

1 opening statement is an important element in the  
2 mechanics of this trial. So this is my view which I  
3 thought you would like to know before we go too far  
4 down the path.

:23PM

5 MR. SCHAR: Thank you, Judge.

6 THE COURT: Is there anything else we have to  
7 deal with?

:23PM

8 MR. NIEWOEHNER: Yes, your Honor, there is.  
9 Counsel for William Quinlan is here, Jonathan King,  
10 and we thought it would be helpful to put some what  
11 we understand waivers to be on the record so that  
12 Mr. Quinlan can understand.

13 THE COURT: Sure.

:23PM

14 MR. NIEWOEHNER: From our conversations and  
15 representations made by counsel for both Mr. Rod  
16 Blagojevich and M. Robert Blagojevich, it's our  
17 understanding they have waived any attorney-client  
18 privilege that exists for any legal representation  
19 that did or might exist between their respective  
20 clients and Mr. Quinlan, that would include both any  
21 governmental privilege that might apply, as well as  
22 any personal privilege, as well as any privilege  
23 that might extend to the friends of Blagojevich or  
24 any private entity.

:24PM

:24PM

25 It would also encompass conversations

1 Mr. Quinlan might have had with other people who  
2 might be considered within the control group for the  
3 State of Illinois, such as, specifically, John  
4 Harris or Robert Greenlee or Lon Monk, and I think  
5 that accurately describes the waiver that they will  
6 make or have made.

7 THE COURT: Mr. Sorosky.

8 MR. SOROSKY: That's correct. That's  
9 correct.

10 MR. ETTINGER: Yes, your Honor, that's  
11 correct.

12 THE COURT: Okay, I have the assurance  
13 statements made in open court by attorneys for both  
14 defendants that that is the waiver and I see  
15 Mr. King is here and has heard them.

16 MR. NIEWOEHNER: And I would just add one  
17 extra point, that also includes conversations either  
18 Mr. Rod or Mr. Robert Blagojevich had with  
19 Mr. Quinlan in the company of other attorneys, which  
20 might include, in fact, for example, Mr. Sorosky or  
21 other defense counsel.

22 MR. SOROSKY: That's correct.

23 MR. ETTINGER: Yes sir.

24 THE COURT: Okay.

25 MR. ETTINGER: Your Honor, just as a

1 follow-up on that. We intend -- now that that issue  
2 is decided, we want to interview Mr. Quinlan and we  
3 believe the protective order provides for us to play  
4 the -- we have the right to play the tapes,  
5 Mr. Quinlan's tapes, to the witness.

:25PM

6 THE COURT: Stop for a second.  
7 Is this in dispute?

8 MR. SCHAR: Judge, I think we need to go back  
9 and look at the protective order and we could have a  
10 discussion with defense counsel.

:25PM

11 THE COURT: I believe you'll probably be able  
12 to reach an understanding and, if you can't, you can  
13 come before me at any time.

14 MR. ETtinger: Okay. I just want to put on  
15 the record, Judge, and we will discuss it with them  
16 before we do it.

:26PM

17 THE COURT: Next status is two weeks.

18 MR. SOROSKY: May 13th?

19 THE COURT: May 14th.

:26PM

20 MR. SOROSKY: Very good.

21 THE CLERK: May 14th at noon.

22 MR. SCHAR: Thank you, Judge.

23 THE COURT: Anything else?

24 MR. SCHAR: No, Judge.

:26PM

25 MR. SOROSKY: No, Your Honor.

1 MR. ETTINGER: No, Judge.

2 THE COURT: All right. Thank you, counsel.

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4 (which concluded the proceedings had on this  
5 date in the above entitled cause.)

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I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT  
FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED  
MATTER

/s/Blanca I. Lara

date

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Blanca I. Lara

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Date